IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.46 of 2003

Metal Box India Ltd. ..Petitioners

Vs.

B.R.Rangari,
Asst.Commissioner of
Labour and Ors. ..Respondents

Mr.C.U.Singh a/w Kiran Bapat i/b Tejpal and co. for the petitioners

Mr.N.M.Ganguli for the repsondent no.3 to 64

Ms.Mamta Sadh, A.G.P. for the respondent nos.1 and 2

Mr.Samrat Rasal i/b M.K.Ambalal and Co. for the respondent nos.65

CORAM : S.U.KAMDAR, J
DATED : 2ND MAY, 2006

ORAL JUDGMENT:

1. The present writ petition is filed challenging the order dt.16.11.02 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Bombay. Some of the material facts of the present case are briefly enumerated as under:

2. The petitioner is a Company incorporated under the Companies Act, 1 of 1956 and have various units in different states. It is the case of the petitioners that in 1987 the worth of the company got fully eroded and there was a negative wealth and accordingly the company's management suspended operations of all its manufacturing units and approached BIFR for a revival scheme, On 27.5.88 the BIFR declared the company as a SICK undertaking within the meaning of section 3(1)(c) of SICA, 1985. In 1988 the present management took over the company and ultimately reopened the Mahol Unit in July, 1988 and the Deonar Unit in October, 1988. In 1992 they reopened the Bombay unit. On 10.11.85 the Hon'ble Supreme Court in SLP (Civil) No. 1018795 directed the company to submit the scheme of rehabilitation under the SICA Act. On 31.12.95 the rehabilitation scheme was formulated and forwarded to BIFR by the operating agency. On 8.3.96 the BIFR formulated private rehabilitation scheme which was circulated and published. On 26.4.96 BIFR heard the suggestions and objections of the parties and thereafter sanctioned the BIFR scheme. An appeal was preferred against the said

order and ultimately the writ petition was filed in the Delhi High Court relating to certain disputes.

3. Sometime thereafter Delhi High Court remanded the matter for reconsideration of the scheme to AAIFR and on 18.8.00 after reconsidering the said scheme the AAIFR sanctioned the scheme prepared by the operating agency with certain modifications. On 16.7.01 the scheme of ICICI being the operating agency was brought in operation.

4. On 30.11.99 the controlling authority passed a common order against the petitioners in respect of Payment of Gratuity Act to various employees. Sometime in or about 2000 after the order was served on the petitioners, the petitioners by claiming descripancies in the order filed a Misc.Application to set aside the said exparte order dt.30.11.99. On 17.10.00 the controlling authority has by an impugned order rejected the said application for recall or setting aside of the exparte order dt.30.11.99. Being aggrieved by the said order 17.10.00 the

petitioners preferred an appeal before the Appellate Authority under section 7 subsection 7 of the Payment of Gratuity Act, 1972. However, the petitioners did not deposit the amount as per the order passed by the Controlling Authority as required under the provisions of the said Act and therefore, the said appeal was not registered. On 25.1.01, the Registry of the Appellate Authority forwarded a letter interalia pointing out that under the provisions of subsection 7 of section 7 of the Payment of Gratuity Act, 1972, the appellants are required to produce a certificate of the Controlling Authority to the effect that the appellants have deposited with him an amount equal to the amount of Gratuity required to be deposited or that the amount has been deposited with appellate authority. In view of the fact that the petitioners had not deposited the aforesaid amount, the petitioners appeal was not registered. Thereafter the union filed a writ petition no.2732 of 2001 before this court against the Collector and the Company for enforcement of the said order dt.17.10.00. In the said writ petition, this court by an order dt.3.5.02 directed the petitioners to

deposit the amount of Gratuity in accordance with the recovery certificate and further directed that only after depositing the said amount, the petitioners can sell the Worli factory. In accordance with the said order the petitioners deposited the amount of Rs.53,42,440/- in the office of the Deputy Commissioner of Labour. On 16.11.02 the appellate authority dismissed the appeal interalia on the ground that the appeal is beyond time and the appellate authority has no power to condone the delay of more than 120 days.

5. Being aggrieved by the said order dt.16.11.02 the petitioners have preferred the present Writ Petition. The learned counsel for the petitioners have placed before me for consideration three points. Firstly, it has been contended that the order passed by the appellate authority that the appeal is beyond time is erroneous and in fact there is no delay in filing an appeal. It has been submitted that the appellate authority has erred in dismissing the appeal on the ground of limitation. The second point which has been urged before me by the learned counsel for the petitioners is that in

any event the order passed by the controlling authority itself is without Jurisdiction because in the case of the petitioners, the petitioners having branches in different states u.s.2(a)(i)(b) of the Payment of Gratuity Act, the appropriate government is the Central Government and not the State government. In support of the aforesaid submission, the learned counsel for the petitioners has relied upon the para 4B of the petition which has been introduced by way of an amendment. It has been contended that there is no denial of the averments made in para 4B of the petition and thus, the court must proceed on the footing that the petitioners have different branches in various states and therefore, under section 2(a) (i)(b) of the Payment of Gratuity Act, the appropriate government is a central government and not the state government.

6. In support of the aforesaid contention, the learned counsel for the petitioners have also relied upon the Judgment of the learned single Judge of this court in the case of Rhone Pounele (India) Ltd v. Anjali Devrukhlar (Mrs.) and Ors.

reported in 2005 II CLR 570 particularly para 8 thereof which reads as under:

> "8. Neither the expression 'establishment' nor for that matter 'branch' is defined by the Act. These expressions must, therefore, beat the meaning which is attributed to them in common parlance. A branch is essentially a limb of an organization or an arm of the organisation through which the organisation carries on business. The branch is as it were a tributary which is controlled by the trunk. The connotation of the word 'branch', is liable to vary depending upon the context and the nature of legislation in which it is used. In Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax, (1978) 1 SCC 636, the Supreme Court held that in relation to Sales Tax legislation branches are not distinct and independent from the assessee but are merely establishments of the assessee (para 22 page 668). In Agencia Commercial International Limited v. Cusotodian of the Branches of Banco National Ultrarnarino, (1982) 2 SCC 482, the Supreme Court held that as a general proposition a body corporate and its branches are not distinct and separate entities from each other; branches constitute mere components through which a corporate entity expresses itself and that all transactions entered into ostensibly with the branches are in legal reality transactions with the corporate body. However, the Court noted that in the case of a Bank which operates through its Branches, the Branches are regarded for many purposes as separate and distinct entities from the head Office and from each other."

7. On the basis of the aforesaid Judgment and the averments made in the petition, the learned counsel for the petitioners has contended that the Controlling Authority has no Jurisdiction to pass an initial order and therefore the said order must be set aside and the petition be granted.

8. It has been admitted by the learned counsel for the petitioners fairly that the issue of Jurisdiction was not raised either before the Controlling Authority or before the Appellate Authority. However, the learned counsel for the petitioners has submitted that since the issue of Jurisdiction goes to the root of the matter and though it is a mixed question of facts and law but the facts being not in dispute this court for the first time must consider and entertain the issue of Jurisdiction in the present writ petition and set aside the order passed by the Controlling Authority as the Controlling Authority had no Jurisdiction to pass the impugned order.

9. The last contention which has been advanced by the learned counsel for the petitioners is that

in view of the provisions of s.22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the authority should not have passed an order and there was a bar from initiating the proceeding for the recovery of the said dues. The learned counsel for the petitioners has further submitted that the issue which has been raised by him has been decided by the judgments in the case of Carona Ltd Vs. Sitaram Atmaram Ghag and Ors. reported in 2000 II CLR 295, Ralliwolf Limited Vs. Regional Provident Fund Commissioner-I for Maharashtra and Goa and Others reported in 2001-I-LLJ, Piramal Spinning & Wvg. Mills Ltd. Vs. Rashtriya Mill Mazdoor Sangh Mumbai reported in 2002-1-LLJ and Ramesh Daji Jadhav Vs. National Testile Corporation (M.N.) Ltd. and Anr reported in 2004 (1) Bom.C.R.4 and in view thereof, he is not pressing the said point in this court. However, he reserves his right to raise the same in higher court and thus, he submitted that this court must record his submission on the third point also.

10. The learned counsel for the respondents has on the other hand submitted that under the

provisions of Payment of Gratuity Act, 1972, the time limit to file an appeal is prescribed for 60 days. It has been submitted that a further time of 60 days can be condoned under the provisions of s.7 of the said Act and therefore there is no power under the appellate authority to further condone the delay in the matter and thus, the appellate authority has rightly rejected the appeal preferred by the petitioners. In support of the aforesaid contention, the learned counsel for the respondents has relied upon the Judgment of the apex court in the case of Union of India vs. Popular Construction Co. reported in AIR (2001) 8 SUPREME COURT CASES 470 and has submitted that once a statute specifically provides for a period of condonation of delay then in that event, the provision of s.5 of the Limitation Act does not apply and thus the authority cannot condone the delay of more than the prescribed period by resorting to s.5 of the Limitation Act. It has been submitted that in the light of the aforesaid fact, there cannot be any question of the authority not having exercised Jurisdiction for condonation of delay. It has been submitted by the learned

counsel for the respondents that in fact there is a substantial delay in filing the appeal. He has submitted that the order is passed on 17.10.00 and the period of first 60 days within which the appeal ought to have been filed had expired on 17.12.00 and further period of 60 days for which the appellate authority is empowered to grant condonation of delay also expired on 17.2.01 whereas the appeal is filed on 3.6.02. According to the authority, there is a delay of almost 20 months whereas the power to condone the delay is only upto 120 days under the provisions of s.7(7) of the said Act. In that light of the matter, the respondents have submitted that the authority has rightly rejected the said appeal.

11. In so far as the issue of Jurisdiction is concerned, the learned counsel for the respondents has submitted that this court for the first time cannot go into the issue of Jurisdiction particularly when it is a mixed question of facts and law. It has been submitted that the petitioners were in fact required to establish on evidence before the authority that infact there are

branches in more than one state. The learned counsel for the respondents has submitted that they have filed an affidavit in this court in which they have averred as under:

> "15. Without prejudice to the aforesaid submissions, I say that the term Establishment is not defined under the payment of Gratuity Act and therefore, the term should get the same meaning as assigned by any other law like the Bombay Shops and Establishments Act, which excludes the Factory within the meaning of the term establishment. I further say that the word factory is used separately in definition 'appropriate government' under the Payment of Gratuity Act to the exclusion of the word 'establishment' I further say that the factory of the petitioner is not a Government factory nor petitioner is a Government Company. I say and submit having regard to the aforesaid proposition of law the appropriate government in respect of the factories of the petitioner is the State Government in the respective state for the purposes of Payment of Gratuity Act. I say and submit that the contention of the petitioner to the contrary is misconceived and untenable in law."

12. It has been submitted in the aforesaid para that the petitioner did not have branches in various states but what they have is the factories and the provisions of s.2(a)(i) (b) of the act is distinct and it relates only to the branches and

not to the various factories. It has been thus, submitted that the contention of the learned counsel by relying upon the aforesaid provisions is without any merits. It has been further submitted that in fact the issue of Jurisdiction under the Payment of Gratuity Act was raised by the petitioners in other cases before the authority and both the controlling authority as well as the appellate authority had rejected the same and the said issue has not been agitated by the petitioners by filing further writ petition in this court and therefore, the said issue is no longer open for agitation in the present case.

13. On merits, the learned counsel has contended that in fact there are no branches of the petitioners in various states but what is there is the factories. The learned counsel for the respondents has by relying upon the definition of the word 'appropriate government' under s.2a) of the Act has made a distinction between the factory and the branches and it has been contended that it is only when there are more than one branch in different states that the appropriate government is

a central government but in case of factories the words used in the said section is either belonging to, or under the control of the Central Government. It has been thus submitted that the aforesaid contention has no merits. In support of the aforesaid argument, the learned counsel has relied upon the Judgment of the apex court in the case of Jeewanlal Ltd. and Ors Vs.Appellate Authority under the Payment of Gratuity Act and others reported in (1984) 4 SCC 356 particularly para 15 of the said judgment which reads as under:

> "We do not think it necessary to deal at length the last and third question raised in some of these appeals viz., the objection to the jurisdiction of the Controlling Authority under Section 3 of the Act to entertain the claim against some of the appellants. It is said that Messrs Jeewanlal (1929) Ltd. is an All-round concern having its branches in more than one State and therefore, the "appropriate Government" within the meaning of Section 2(a) (1)(b) of the Act in relation to them is the Central Government for purposes of Section 3. The appropriate Government is the Central Government in relation to an establishment belonging to or under the control of the Central Government or having branches in more than one State or of a factory belonging to, or under the control of the Central Government or in the case of a major port, mine, oilfield, or railway company. Section 2(a)(i) of the Act reads as follows:

2. In this Act, unless the context otherwise requires-

(a) "appropriate government" means, -

(i) in relation to an establishment -

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to or under the control of, the Central Government.

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

It would appear that the definition of appropriate Government in Section 2(a)(i) in relation to an establishment makes a distinction between establishments and factories. In relation to an establishment belonging to, or under the control of, the Central Government and of a factory belonging to, or under the control of, the Central Government, the appropriate Government is the Central Government. But the Central Government is the appropriate Government only in relation to an establishment having branches in more than one state. There is no like provision made in relation to such an establishment having factories in different states. We feel that the point relating to the jurisdiction of the Controlling Authority under Section 3 of the Act does not really arise. It appears that Messrs Jeewanlal (1929) Ltd. have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras viz., Shree Ganeshar Aluminium Works and Messrs

> Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1300 workmen in its factories at Calcutta, Bombay and Madras. We are inclined to the view that the Controlling Authority had jurisdiction to entertain the claim of an employee working in an office attached to a factory as such an office would be an adjunct of the factory but that is not the question before us. The Controlling Authority has in fact, confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question. That being so, the contention relating to jurisdiction of the Controlling Authority under Section 3 of the Act must fail."

14. In so far as the last contention based on s.22 of the SICA Act is concerned, the learned counsel for the respondents has submitted that the issue being decided by two courts in the aforesaid judgment it is no longer required to be re-considered.

15. I have considered the rival contention of the parties. In my opinion in so far as issue of limitation is concerned, I do not find any error in the findings given by the appellate authority that

the appeal is barred by the law of limitation and that the appellate authority has no power to extend the delay of more than 60 days after the expiry of initial period of 60 days. Under the statute, it is provided that if the period of filing an appeal is expired then the authorities can condone the delay of further period of 60 days on sufficient cause being shown. The said section 7(7) of the Payment of Gratuity Act, 1972 reads as under:

> "(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:
>
> Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period of sixty days, extend the said period by a further period of sixty days:
>
> (Provided further no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.)"

16. Section 7 provides that any person

aggrieved by the order passed under sub-section (4) can prefer an appeal to the Appellate Authority within 60 days from the date of receipt of the order. The proviso further empowers the appellate authority that if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within period of sixty days then the power is conferred to condone the delay of a period of 60 days and no further. Thus, the total period within which an appeal should be filed is 120 days as contemplated under first proviso to section 7 thereof.

17. Section proviso to section 7 provides that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount of gratuity as per the order passed by the controlling authority under sub-section (4) of section 7 or the said amount is deposited by the appellant with the appellate authority. The contention of the learned counsel for the petitioners that the appeal was filed

within time because the appeal was filed on 15.1.01 i.e. within the extended period of 60 days. However, the said appeal was admittedly, filed without depositing the necessary amount and thus, it cannot be accepted that the appeal was filed wihin time. Provision of s.7 has to be read with both the proviso together. It cannot be that the appeal is preferred without depositing the amount as necessary under second proviso to s.7 and still for the purpose of limitation the said appeal would be within time. The second proviso to s.7 contemplates that an amount has to be deposited at the time of preferring an appeal and if no amount is deposited there is no valid appeal filed and the question of admission thereof would not arise. The learned counsel for the petitioners has contended that in fact the appeal was filed on 15.1.01 which is within the extended period of 60 days and therefore, the delay was only of 13 days In my opinion, the aforesaid contention is required to be rejected. On the plain reading of s.7(7) there is no manner of doubt that the payment has to be deposited not at the time of admission of the appeal but at the time of preferring an appeal and

if there is no deposit of the amount then there is no valid appeal which has been filed before the authorities. The authorities has also by a letter dt.25.1.01 pointed out the aforesaid facts that in view of the fact that the appeal if filed without depositing the money, the said appeal cannot be even registered with the authority. The said letter is at Ex.'K' page 331 of the petition. If the appeal cannot be even registered without depositing the amount, the question of the said appeal being filed and the period of limitation stops running cannot and does not arise.

18. Now turning to the main issue raised by the petitioners that the provision of s.5 of the Limitation Act for condonation of delay applies even after the first proviso to s.7(7) prescribes for extension of time for sufficient cause only by 60 days. In so far as the aforesaid contention is concerned, I am of the opinion that it is now well settled that whenever a special statute prescribes a limited period of condonation then it is not open to apply the provision of s.5 of the Limitation Act. Limitation Act also applies to the special

statute but by virtue of specifically providing for condonation of delay only upto 60 days. By all necessary implication, the provision of s.5 of the Limitation Act has been extended by the legislature while enacting proviso of s.7(7) of the Payment of Gratuity Act, 1972.

19. In a similar case, under the Arbitration Act, the Apex Court in the case of Union of India v.Popular Construction Co.(Supra) has held that once a special statute prescribes for a limitation period for condonation of delay then provision of s.5 of the Limitation Act has no application. In the light of the aforesaid, it is not possible to accept the contention of the learned counsel for the petitioners that even after the period of 60 days has expired within which the appellate authority has power to condone the delay still the appellate authority by relying on s.5 of the Limitation Act can condone the delay beyond the period of 60 days. In my opinion, the aforesaid submission is required to be rejected and I accordingly, reject the same.

20. The next contention of the learned counsel for the petitioners on the issue of jurisdiction and contention that this court must for the first time decide the issue of Jurisdiction of the Controlling Authority in the present writ proceeding, I am of the opinion that in the present case the issue of jurisdiction is a mixed question of law and facts and therefore, cannot be determined for the first time in writ jurisdiction. I am also of the opinion that for the purpose of issue of Jurisdiction where it is a mixed question of law and facts, it is necessary for the petitioners to lay foundation of facts before the authority. In the present case, the question of facts has to be established before the controlling authority and appellate authority namely that the petitioner has branches in more than one state. I am thus, of the view that having not laid any such foundation before the authority, both before the controlling authority or the appellate authority, it is not permissible to entertain the issue of Jurisdiction for the first time in writ proceeding under Article 226 of the Constitution of India. However, even accepting the contention of the

learned counsel for the petitioners that if there is no dispute on the facts then in that event this court must go into the consideration of the issue of Jurisdiction. I am of the view that there is no such admitted position in the present case. In para 4B of the petition, the petitioners have for the first time by way of amendment introduced the facts pertaining to Jurisdiction. In para 4B it has been stated by the petitioners, that the petitioners is an establishment having branches in 7 states. The said averments reads as under:

> "4B. It is submitted that as the petitioner is an establishment having branches in seven states, being Maharashtra, West Bengal, Haryana, Tamil Nadu, Karnataka, Kerala and Gujarat, the appropriate Government is the Central government. The respondent nos. 1 and 2 being Controlling/Appellate Authorities appointed by the respective State Governments can exercise Jurisdiction only over establishments falling within sub-clause (ii) of Section 2(a) of the Payment of Gratuity Act, and not in respect of the Petitioner Company. The said Respondent nos. 1 and 2 have no power and jurisdiction to entertain gratuity claims pertaining to companies like the petitioner with branches in many states, which can only be entertained by the Central Controlling Authority/Appellate Authority appointed by the Central Government, having established local offices in various states in India. It is thus, that all the 3 original applications as stated in the writ

> petition were wholly without Jurisdiction and could not be entertained, and therefore, cannot be proceeded with further and orders passed therein cannot be enforced by respondent nos.1 and 2 and it is therefore, prayed that all proceedings thereof, and all orders passed therein be declared in operative, null and void.

21. On the other hand, the respondents have in their affidavit in para 14 and 15 contended that the petitioners did not have any branches in various states but what they had are the factories and thus the factories are not covered by the the word 'branches' as provided for under s.2(a)(i)(b) of the Act. It has been thus, submitted that if there are factories then the appropriate government is only the State Government and not the Central Government because only in cases where there are branches in more than one state, the said s.2(a)(i)(b) will apply. The learned counsel for the petitioner has further contended that even if they are the factories still it is an establishment and thus it is covered by s.2(a)(i). of the Act. The Judgment relied upon in support of the aforesaid contention is the case Rhone Poulene (India) Ltd. v.Mrs.Anjali Devrukhkar and Ors. (Supra). In para 8 of the said judgment it has

been held by the learned single Judge that neither the expression 'establishment' nor for that matter 'branch' is defined by the Act. Therefore, these expressions must bear the meaning which is attributed to them in common parlance. It has been held that a branch is essentially a limb of an organisation or an arm of the orgnaisation through which the organisation carries on business. By relying upon two supreme court Judgments arising under the Sales Tax Act being the case of Polestar Electronic (Pvt.) v. Additional Commissioner, Sales Tax, (1978) reported in 1 SCC 636 and Agencia Commerial International Limited v. Custodian of the Branches of Banco National Ultrarnarino (1982) reported in 2 SCC 482, the learned single Judge has held that the body corporate and its branches are not distinct and separate entities from each other and that the branches in legal reality are the limb of the body corporate. The learned single Judge after considering the evidence on the record in that case in para 6 have given a finding that it has been established on evidence that there are various branches in different states and the case falls under s.2(a)(i)(b). Though in para 8 the

broader proposition of law has been laid down that even if there is an activity of business carried on in different states still it would be an establishment and therefore s.2(a)(i)(b) will apply.

22. In so far as the aforesaid broader proposition of law is concerned, it is not possible to agree with the learned single Judge in the light of the fact that while interpreting the word ’appropriate government’ the Apex Court in the case of Jeewanlal Ltd. and Ors. V. Appellate Authority under the Payment of Gratuity Act and others (supra) has infact held that there is a distinction between the establishment and the factory. It has been held that the factory is covered by the provisions of s.2(a)(i)(c) and only the factories belonging to Central Government is covered by the word ’appropriate government’. The learned counsel for the petitioners has however, contended that the Judgment of the Apex Court in the case of Jeewanlal Ltd. and Ors. V. Appellate Authority under the Payment of Gratuity Act and others (Supra) is not a judgment laying down the

aforesaid proposition of law because para 15 commences with the words, "We do not think it necessary to deal at length the last and third question raised in some of these appeals." He has submitted that by virtue of use of aforesaid words, the Judgment of the apex court dealing with the definition is not a binding precedent but at the highest a passing observation. It has been submitted that the said reasoning given in para 15 is not even an obitter dicta. In so far as the aforesaid contention is concerned, Firstly, I am of the view that the Apex Court Judgment in the case of Jeevanlal Ltd and Ors. (Supra) is a binding precedent and is neither an obitter dicta nor a passing observation as contended by the learned counsel for the petitioners. I am of the view that though the supreme court might not have dealt with the issue at length that does not make the said judgment any less a binding precedent of the Supreme Court which is binding on this court. I am of the view that the Judgment of the Apex Court is binding on this court. Supreme court has in the aforesaid para gone into an issue which directly arise in the present case and has held that there

is a distinction between the establishment and factories and branches are not included in the word 'factory' and the factory is only covered by virtue of s. 2(a)(i)(c) and not by 2(a)(i)(b).

23. However, the aforesaid judgment has not been considered by the learned single Judge in the case of Rhone Poulene (India) Ltd. v. Mrs. Anjali Devrukhkar and Ors (Supra). It was not brought to the notice of the learned single Judge. In my view the broader proposition of law which has bene laid down in para 8 of the said judgment of the learned single Judge is thus, per incurium, and is not a binding proposition of law in the light of the view of the apex court in para 15 of the said Judgment being contrary to the view expressed by the learned single Judge.

24. On the facts of the case before the learned single Judge, it was established that there were various branches and thus the said case was covered by the provisions of s.2(a)(i)(b) and therefore, the court was right in holding that the Central Government is the appropriate government but in the

present case there is no such evidence and the bare averments are also denied by the other side. Thus,in my opinion, if it is a factory then it will not be governed by the s.2(a)(i)(b) and thus, it cannot be held that in the present case the controlling authority and appellate authority had no Jurisdiction to deal with the case as contended. In my opinion, the order passed by the lower authorities are valid and without Jurisdiction and therefore, I reject the contention of the learned counsel for the petitioners in that behalf.

25. The next contention which has been raised in respect of s.22 of the SICA Act. I would agree with the view which has been taken by the learned single Judges in the case of Carona Ltd Vs. Sitaram Atmaram Ghag and Ors. reported in 2000 II CLR 295, Ralliwolf Limited Vs. Regional Provident Fund Commissioner-I for Maharashtra and Goa and Others reported in 2001-I-LLJ, Piramal Spinning & Wvg. Mills Ltd. Vs. Rashtriya Mill Mazdoor Sangh Mumbai reported in 2002-1-LLJ and the Division Bench Judgment in the case of Ramesh Daji Jadhav Vs. National Textile Corporation (M.N.) Ltd. and

Anr reported in 2004 (1) Bom.C.R.4 (Supra) and in that view of the matter I also decide the issue against the petitioners. In my opinion, the provision of s.22 of the SICA Act has no application for the reason set out in the aforesaid Judgments. In that light of the matter, there is no substance in the present petition. Petition therefore must fail. Petition dismissed accordingly. However, there shall be no order as to costs.